

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Christopher Conway	Team: Squad #15	CCRB Case #: 201508433	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 10/01/2015 5:30 PM	Location of Incident: § 87(2)(b)	Precinct: 113	18 Mo. SOL 4/1/2017	EO SOL 4/1/2017	
Date/Time CV Reported Mon, 10/05/2015 3:05 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 10/05/2015 3:05 PM		
Complainant/Victim	Type	Home Address			
Witness(es)	Home Address				
Subject Officer(s)	Shield	TaxID	Command		
1. POM Janson Pena	13789	949461	113 PCT		
Witness Officer(s)	Shield No	Tax No	Cmd Name		
1. POF Alicia Commisso	08921	954660	113 PCT		
Officer(s)	Allegation			Investigator Recommendation	
A.POM Janson Pena	Abuse: PO Janson Pena stopped § 87(2)(b)				
B.POM Janson Pena	Abuse: PO Janson Pena entered § 87(2)(b) in Queens.				
C.POM Janson Pena	Force: PO Janson Pena pointed his gun at § 87(2)(b)				
D.POM Janson Pena	Abuse: PO Janson Pena threatened to arrest § 87(2)(b)				

Case Summary

On October 5, 2015, § 87(2)(b) filed this complaint with the CCRB by phone.

On October 1, 2015, at 5:30 p.m., § 87(2)(b) was driving in the vicinity of Farmers Boulevard and Montauk Avenue in Queens; his car was a recent purchase and lacked license plates. § 87(2)(b) was driving a salvaged vehicle from Florida, and the temporary vehicle registration which was hanging on the rear driver's side window was expired. § 87(2)(b) admitted to not having the vehicle registered. A marked NYPD vehicle containing PO Janson Pena and PO Alicia Commisso of the 113th Precinct followed § 87(2)(b) and eventually activated its lights and sirens to initiate a vehicle stop. Allegedly unaware he was being stopped, § 87(2)(b) drove approximately four blocks back to his house and into his open garage with the officers following behind. § 87(2)(b) alleged that PO Pena exited the RMP entered his garage with his gun pointed at § 87(2)(b) (**Allegations A, B and C**). During the course of the incident PO Pena allegedly told § 87(2)(b) that he was going to be arrested (**Allegation D**). § 87(2)(b) was issued a summons for lack of registration for his vehicle.

Mediation, Civil and Criminal Histories

- § 87(2)(b) was offered mediation as an alternative to resolve this complaint, but he rejected this as he wanted the subject officer to be disciplined.
- A FOIL request returned by the Office of the New York City Comptroller indicates that as of October 20, 2015, § 87(2)(b) has not filed a notice of claim in regards to this incident (encl. 08 Board Review).

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB History

- This is the first complaint filed by § 87(2)(b) with the CCRB.
- PO Pena has no substantiated allegations against him in his five-year tenure with the New York City Police Department. § 87(2)(g)

Video Footage

§ 87(2)(b) provided video footage from his home surveillance system that depicts his car driving into his garage followed closely by PO Pena and PO Commisso's RMP. The video depicts PO Pena running into § 87(2)(b)'s garage after him, drawing his gun out of a holster on the right side of his body and holding it aimed at the ground.



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Finding and Recommendations

Recommendations

Allegation A—Abuse of Authority: PO Janson Pena stopped § 87(2)(b)

§ 87(2)(b) was driving a salvaged vehicle from Florida with no license plates or registration while waiting for the title and registration to arrive in the mail (statement encl. 01 Board Review). As he drove across Farmers Boulevard, § 87(2)(b) observed the NYPD van in his vicinity, but stated he did not notice the van following him as he drove home. § 87(2)(b) did not give any thought to the RMP again until right in front of his house when he heard two whoops, looked back, and saw the RMP behind him with no lights on. § 87(2)(b) drove directly into the garage, as he thought the RMP was just passing him due to the lack of lights. At this point, § 87(2)(b) parked the car, looked back again, and allegedly saw PO Pena running towards him into the garage to conduct a stop.

PO Pena testified that after seeing § 87(2)(b) commit several New York State VTL offenses he attempted to pull § 87(2)(b) over (statement encl. 03 Board Review). § 87(2)(b) sped up and refused to stop; PO Pena was concerned that § 87(2)(b) was in a stolen vehicle due to the lack of plates, the disregard for stop signs, and the evasion of the stop. PO Pena stated he used his discretion to only issue a summons for the lack of registration. PO Pena explained that when he saw § 87(2)(b) come into the garage and that she was pregnant, he decided to not give a summons to make it easier on her. § 87(2)(b) corroborated that when she went into the garage, she heard PO Pena tell § 87(2)(b) that he had been trying to stop him. While PO Commisso did not voice this same suspicion that § 87(2)(b) might be in a stolen vehicle, she did believe that § 87(2)(b) was intentionally trying to evade the stop by refusing to bring his vehicle to a halt (statement encl. 04 Board Review).

§ 87(2)(g)

Allegation B—Abuse of Authority: PO Janson Pena entered § 87(2)(b) in Queens.

When § 87(2)(b) arrived at his house, he pulled into his driveway and entered his garage. PO Pena exited the RMP and ran into the garage to conduct the stop of § 87(2)(b).

PO Pena testified that he observed § 87(2)(b) committing several NYS Vehicle and Traffic Law violations such as operating a vehicle with no license plates and dark tinted windows, driving through stop signs, and attempting to evade a vehicle stop. PO Pena ran inside the garage based on the fact that the garage door “was open” and because it was a possible felony stop for a stolen vehicle and § 87(2)(b) was trying to evade it. PO Commisso testified that she saw § 87(2)(b) making a move as if he was going to go inside his house and escape the police.

The case of People v. Stockman, 159 Misc. 2d 730 (1993) (encl. 12 Board Review)

§ 87(2)(g)

§ 87(2)(b) The court found in this case that violations of NYS VTL are of “such minor import that exigent circumstances did not exist with respect to them so as to permit entry by the officer.”

§ 87(2)(g)

Allegation C—Force: PO Janson Pena pointed his gun at § 87(2)(b)

The home surveillance video footage shows at 21 seconds PO Pena running into § 87(2)(b)'s garage with his gun in his right hand, out of the holster but pointed towards the ground (screenshot encl. 06 Board Review). § 87(2)(b) alleged that PO Pena aimed his gun at him after entering his garage.

PO Pena initially denied that he drew or pointed his firearm. Upon seeing the video during his interview, PO Pena admitted he drew his firearm for officer safety during a felony stop, but denied that he pointed it at § 87(2)(b). PO Pena, as discussed above, believed that § 87(2)(b) was intentionally evading a car stop, and due to the lack of plates and his evasion, that he was possibly piloting a stolen car.

§ 87(2)(b) did not see PO Pena holding the firearm, but her view was partially obscured by PO Pena's body (statement encl. 02 Board Review). § 87(2)(b) left to get her camera, and when she re-entered the garage PO Pena's firearm was in its holster.

PO Commisso did not see PO Pena pointing his firearm, nor did she see it drawn or in his hand out of his holster at any point during the incident.

§ 87(2)(g)

§ 87(2)(g)

Allegation D—Abuse of Authority: PO Janson Pena threatened to arrest § 87(2)(b)

It is undisputed that during this incident, PO Pena made a statement to § 87(2)(b) to the effect that he was going to get arrested if he failed to provide identification.

§ 87(2)(b) specifically alleged that PO Pena said, "Give me your license, you're going to get arrested." § 87(2)(b) described PO Pena saying, "You can film, he's going to get arrested," in regards to § 87(2)(b).

PO Pena testified he asked § 87(2)(b) at least six times to provide his identification, finally saying, "You're going to get arrested if you don't comply." § 87(2)(b) then provided his identification (PO Commisso did not hear this conversation take place.)

Police Department v. Grandstaff, OATH Index No. 79085/03 (2004) (encl. 11 Board Review) finds that a threat of arrest made to calm a potentially aggressive situation or in response to a perceived violation of the law does not constitute misconduct.

§ 87(2)(g)

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date